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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 JEAN KILAT MILLER,

11 Plaintiff,

12 v.

13 RICK W. SKOGG, *et al.*,

14 Defendants.
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Case No. 2:10-CV-01121-KJD-GWF

ORDER

16 Currently before the Court is the Motion to Dismiss Plaintiff's Amended Complaint (#33) of
17 Defendants Rick W. Skogg, individually and in his capacity as President of Aurora Loan Services,
18 LLC and Linda Cervin, individually and in her capacity as President of Mortgage Electronic
19 Registration Systems, Inc. (collectively "Defendants"). Plaintiff responded (#53) and Defendants
20 have replied (#54).

21 **I. Background**

22 On or about December 13, 2005, *pro se* Plaintiff Jean Kilat Miller borrowed \$310,500 to
23 purchase real property located at 8164 Kentshire Drive, Las Vegas, NV 89117. Plaintiff obtained
24 two loans, each of which was secured by a Deed of Trust naming Direct Access, LLC as the lender,
25 Plaintiff as the borrower, Ticor Title as Trustee, and Mortgage Electronic Registration Systems, Inc.
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1 (“MERS”) as the Lender’s nominee. Aurora Loan Services (“Aurora”) serviced the loan. The Deeds
2 of Trust each expressly granted MERS the right to sell the subject property if necessary to satisfy the
3 debt. In February of 2009, Plaintiff defaulted on her mortgage obligations.

4 On May 8, 2009, MERS, as lender’s nominee, substituted Quality Loan Service Corporation
5 (“QLS”) in the place of the original Trustee of the First Deed of Trust which secured a Promissory
6 Note in the amount of \$241,500. QLS thereafter recorded a Notice of Default. Plaintiff did not cure
7 the default, and QLS recorded a Notice of Trustee’s Sale. The original sale date was postponed.
8 QLS subsequently recorded a second Notice of Trustee’s Sale on June 21, 2010, listing the sale date
9 as August 16, 2010. On July 8, 2010, Plaintiff filed her Complaint in this Court, alleging a variety of
10 claims against several parties, including Defendants Cervin on behalf of MERS and Skogg on behalf
11 of Aurora. The property was sold on October 27, 2010.

12 The causes of action alleged in the pleadings are not entirely clear, but it appears that
13 Plaintiff’s Amended Complaint brings claims alleging violations of the Uniform Commercial Code
14 (“UCC”), fraud, lack of standing to foreclose, and apparently for a qui tam action.

15 II. Legal Standard for Motion to Dismiss

16 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff’s complaint for “failure
17 to state a claim upon which relief can be granted.” A properly pled complaint must provide “a short
18 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
19 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
20 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation
21 of the elements of a cause of action.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Papasan
22 v. Allain, 478 U.S. 265, 286 (1986)). “Factual allegations must be enough to rise above the
23 speculative level.” Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint
24 must contain sufficient factual matter to “state a claim to relief that is plausible on its face.” Iqbal,
25 129 S. Ct. at 1949 (internal citation omitted).

1 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
 2 considering motions to dismiss. First, the Court must accept as true all well-pled factual allegations
 3 in the complaint; however, legal conclusions are not entitled to the assumption of truth. Id. at 1950.
 4 Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not
 5 suffice. Id. at 1949. Second, the Court must consider whether the factual allegations in the
 6 complaint allege a plausible claim for relief. Id. at 1950. A claim is facially plausible when the
 7 plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the
 8 defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint does not permit the
 9 court to infer more than the mere possibility of misconduct, the complaint has "alleged—but not
 10 shown—that the pleader is entitled to relief." Id. (internal quotation marks omitted). When the
 11 claims in a complaint have not crossed the line from conceivable to plausible, plaintiff's complaint
 12 must be dismissed. Twombly, 550 U.S. at 570.

13 Courts must liberally construe the pleadings of *pro se* parties. See United States v. Eatinger,
 14 902 F.2d 1383, 1385 (9th Cir. 1990). However, *pro se* litigants must supply a minimum factual basis
 15 for the claims they assert against defendants. Brazil v. U.S. Dept. of Navy, 66 F.3d 193, 199 (9th
 16 Cir. 1995). "Even given the more generous pleading standards for *pro se* plaintiffs," a plaintiff must
 17 "provide [the] minimum factual basis needed to provide notice to [the] defendants." Turner v.
 18 County of Los Angeles, 18 Fed.Appx. 592, 596 (9th Cir. 2001). A *pro se* complaint can be
 19 dismissed if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his
 20 claim which would entitle him to relief." Haines v. Kerner, 404 U.S. 519, 520-521. (1972) (quoting
 21 Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

22 III. Discussion

23 A. UCC Claims

24 Plaintiff's Amended Complaint avers that this action is based on provisions of the UCC
 25 codified by the Nevada Legislature as N.R.S. §§ 104.9207 (rights and duties of a secured party in
 26 possession of collateral), 104.9210 (request for accounting), 40.010 (action for adverse claims) "and

others.” (#7 at ¶ 2.) However, N.R.S. § 104.9109(2)(k) expressly provides that the Article does not apply to the creation or transfer of an interest or lien in real property. Moreover, Plaintiff includes no allegations to support her claims based on the statutes listed and provides no information sufficient to put Defendants on notice of how they violated these provisions. Plaintiff does not deny that she executed documents to obtain financing for the subject property and that she stopped making payments on the loans, which triggered non-judicial foreclosure pursuant to N.R.S. § 107.080. Accordingly, Plaintiff fails to state a claim under N.R.S. §§ 104.9207, 104.9210, or 40.010 as alleged in her Complaint.

B. Fraud

Fed. R. Civ. P. 9(b) requires that a party pursuing a cause of action for fraud “state with particularity the circumstances constituting [the] fraud.” Thus to sufficiently plead fraud a plaintiff must provide “an account of the time, place, and specific content of the false representations, as well as the identities of the parties to the misrepresentations.” Swartz v. KPMG, LLP, 476 F.3d 756, 764 (9th Cir. 2007); see also, Morris v. Bank of Nev., 886 P.2d 454, 456 n. 1 (Nev.1994).

Here, Plaintiff fails to allege any details regarding the time, place, or circumstances of the alleged fraudulent actions of the moving Defendants. Although the Court must construe the pleadings of *pro se* parties liberally, “[*p*]ro se litigants must follow the same rules of procedure that govern other litigants.” King v. Atiyeh, 814 F.2d 565, 567 (9th Cir.1987). See also, Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir.1995) (“Although we construe pleadings liberally in their favor, *pro se* litigants are bound by the rules of procedure.”); Jacobsen v. Filler, 790 F.2d 1362, 1364 (9th Cir.1986) (“[*P*]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record.”). Plaintiff’s fraud claim fails to meet the required pleading standard. Accordingly, her fraud claim is dismissed.

C. Non-Judicial Foreclosure

In her complaint, Plaintiff claims that Defendants “altered, destroyed, and/or mutilated” original copies of the promissory note, allonges, deed of trust, registration statement, prospectus, and

1 Federal Reserve Board Forms connected with the subject property. (#7.) Plaintiff however, provides
 2 no support for these allegations. Plaintiff also claims that Defendants lack standing or authority to
 3 foreclose on the subject property because they have not produced the original note. The Court is
 4 familiar with this and similar arguments as said arguments have been raised in previous cases.
 5 Contrary to Plaintiff's argument, however, this Court has held that a nominee beneficiary—in this
 6 case MERS—does have standing to implement non-judicial foreclosure proceedings under Nevada
 7 law. See eg., Croce v. Trinity Mortgage Assur., Case No. 2-08-cv-01612-KJD (D. Nev. Sept. 28,
 8 2009); Elias v. HomeEQ Servicing, No. 08-1836, 2009 WL 481270, at *1 (D.Nev. Feb. 25, 2009);
 9 Dunlap v. Mortgage Elec. Registration Sys., Inc., No. 2:08-cv-00918, slip op. at 1 (D.Nev. Jan. 5,
 10 2009) (granting motions to dismiss filed by MERS and ReconTrust because MERS “does have
 11 standing and the authority to initiate foreclosure proceedings on the subject property under the
 12 language of the Deed of Trust”).

13 California courts have made it clear that an “allegation that the trustee did not have the
 14 original note or had not received it is insufficient to render the foreclosure proceeding invalid.” Neal
 15 v. Juarez, 2007 WL 2140640 (S.D. Cal. July 23, 2007) (citing R.G. Hamilton Corp. v. Corum, 218
 16 Cal. 92, 97, 21 P.2d 413 (1933) and California Trust Co. v. Smead Inv. Co., 6 Cal.App.2d 432, 435,
 17 44 P.2d 624 (1935)); See also Hafix v. GreenPoint Mortgage Funding, Inc., 652 F.Supp.2d 1039,
 18 1043 (N.D. Cal. 2009). Nevada courts often look to California law where, as here, the statutes at
 19 issue are substantively similar. Commercial Standard Ins. Co. v. Tab Constr., Inc., 94 Nev. 536, 583
 20 P.2d 449, 451 (Nev. 1978). Accordingly, the Court finds that Plaintiff's claims based upon
 21 Defendants' alleged lack of standing should also be dismissed.

22 D. Qui Tam

23 The right to bring a qui tam action is entirely created by statute. Vt. Agency of Natural
 24 Resources v. U.S. ex rel Stevens, 529 U.S. 765, 769 (2000). A qui tam action is for redress of an
 25 injury to the government. More specifically, it is the government's injury that confers standing upon
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1 the private person, and the qui tam plaintiff has standing because he is a partial assignee of the
2 United States' claims against a defendant. Id.

3 Here, Plaintiff both fails to cite a statutory basis for her alleged qui tam claim, or to allege
4 sufficient facts to support such an action. The Complaint merely alleges that "defendants have
5 defrauded Nevada, Nevada taxpayers, Nevada body politic, Nevada citizens, and Nevada
6 government, et al. Out of their rightfully due 'public' recording fees" (#7 at ¶ 9.) Accordingly,
7 Plaintiff's complaint does not state a valid qui tam cause of action.

8 E. Other Claims

9 Plaintiff's complaint contains numerous other almost incomprehensible assertions. None of
10 these state a cause of action or give sufficient notice to the Defendants of what they did wrong.
11 Accordingly, Defendants' Motion to Dismiss is granted as to the entire Complaint.

12 IV. Request to Replace Defendant Cervin

13 Plaintiff, in her Response, asks the Court to replace Linda Cervin for MERS with Mr. R.K.
14 Arnold. Plaintiff has no claim against either of these individuals and the request is moot.

15 V. Conclusion

16 Accordingly, **IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss Plaintiff's
17 Amended Complaint (#33) is **GRANTED**.

18 DATED this 21st day of July 2011.

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22 Kent J. Dawson
23 United States District Judge
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